

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RECHO BURNS,

Petitioner,

v.

Case No. 04-72051

PAUL RENICO,

Honorable Patrick J. Duggan

Respondent.

OPINION AND ORDER

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on September 20, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Recho Burns was convicted by a jury in the Wayne County Circuit Court, State of Michigan, of felony murder in violation of MICH. COMP. LAWS ANN. § 750.316(1)(b). Petitioner is currently serving a life sentence at the St. Louis Correctional Facility in St. Louis, Michigan. On June 22, 2004, Petitioner filed a petition for a writ of habeas corpus in this Court pursuant to 28 U.S.C. § 2254, in which Petitioner contends that he is being held unlawfully because: (1) he was denied his due process right to a properly instructed jury when the state court misinstructed the jury on the intent element of felony murder; and (2) he was denied his constitutional right to due process when the prosecution presented legally insufficient evidence to convict him of felony

murder.

On June 29, 2005, this Court referred the matter to Magistrate Judge Virginia M. Morgan for a Report and Recommendation (R&R). On August 16, 2005, Magistrate Judge Morgan filed her R&R recommending that this Court deny Petitioner's application of a writ of habeas corpus. At the conclusion of the R&R, Magistrate Judge Morgan advises the parties that they may object and seek review of the R&R within ten days of service upon them. The R&R also advised the parties that "[f]ailure to file specific objections constitutes a waiver of any further right of appeal," citing *Thomas v. Arn*, 474 U.S. 140 (1985), *Howard v. Secretary of HHS*, 932 F.2d 505, 508 (6th Cir. 1991), and *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).¹ Neither party filed objections to the R&R.

The Court, however, has carefully reviewed the R&R and concurs with Magistrate Judge Morgan's conclusion that Petitioner's application for a writ of habeas corpus should be denied.

Accordingly,

¹In *United States v. Walters*, the Sixth Circuit held that a party waives his or her right to appeal by failing to file objections to a magistrate judge's report and recommendation within ten days, provided the magistrate judge notified the parties that failure to file objections constitutes a waiver of appeal. 638 F.2d 957, 949-50 (6th Cir. 1981). The Supreme Court affirmed the Districts' power to impose such an administrative rule in *Thomas v. Arn*, 474 U.S. 140, 105 S. Ct. 466 (1985). See also *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 508 (6th Cir. 1991). Magistrate Judge Morgan notified the parties that failure to file objections would constitute a waiver of their right to appeal; nevertheless, Petitioner failed to file any objections to the R&R. Therefore, Petitioner has waived his right to appeal.

IT IS ORDERED that Petitioner's application for a writ of habeas corpus pursuant to § 2254 is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

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St. Louis Correctional Facility
8585 N. Croswell Road
St. Louis, MI 48880

Debra Gagliardi, A.A.G.

Magistrate Judge Virginia M. Morgan